



(118)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri

Writ Petition No.995 of 2003

Petitioner

Rohit Kumar Nirmalkar, S/o
Ratanlal Nirmalkar, Aged about
26 years, R/o Gram Panchayat,
Purramtola, Block-Churiya, Teh.
& Distt. Rajnandgaon (CG).

Versus

Respondents :

1. State of Chhattisgarh, Through :
Secretary, Panchayat and Rural
Development Department, D.K.S.
Bhawan, Raipur.
2. Collector, Rajnandgaon, Distt.
Rajnandgaon (CG).
3. Shri Tulsiram Mandavi, S/o
Unknown, Sarpanch, Gram
Panchayat Purramtola, Block
Churiya, Distt. Rajnandgaon.
4. Shri Barelal Kannauje, S/o
Unknown, Assistant Gram
Panchayat Officer, Shikari
Mahaka, Distt. Rajnandgaon.
5. Gram Panchayat, Purramtola,
Block Churiya, District
Rajnandgaon (CG).

Present : Shri Anoop Mazumdar, counsel for the petitioner.
Shri Sushil Dubey, Govt. Advocate for the State.

ORDER
(Passed on 9th April, 2007)

By this petition under Article 226/227 of the Constitution of India,
the petitioner impugns the order dated 3-2-2003 (Annexure-P/7)
whereunder he has been removed from the post of Panchayat Karmi on
the basis of resolution passed by Village Panchayat, Purramtola in its
meeting dated 26-1-2003 and 3-2-2003.

2) The facts in nutshell are that the petitioner was appointed as Panchayat Karmi in Village Panchayat Purramtola, Block Churiya, District Rajnandgaon. The petitioner received a notice dated 29-1-2003 (Annexure-P/4) to initiate action against him and thereafter, another notice, on 3-2-2003, was issued without issuing proper charge sheet, as envisaged under Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short "the Rules, 1999").

3) Learned counsel appearing for the petitioner submits that the order impugned, herein, is not in consonance with the provisions of the Rules, 1999, as no opportunity of hearing was afforded to the petitioner by issuing a charge sheet after framing definite charges on the basis of allegations and no enquiry was held. He further submits that an enquiry was already held by the Deputy Director (Panchayat), though no notice of enquiry was issued to the petitioner and the petitioner was not afforded any opportunity of hearing.

4) Admittedly, the Village Panchayat, before passing the impugned termination order has not complied with the provisions of Rule 7 of the Rules, 1999. This Court in *Dhaluram Kosaria vs. State of C.G. & Others*¹, *Beegan Ram vs. State of C.G. & Others*² and *Prakash Chand Soni vs. State of C.G. & Others*³ has held that the non-compliance of the statutory provisions and denial of principles of natural justice tantamounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but the provisions of Article 311(2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules, 1999.

¹ 2006 (2) CGLJ 186

² 2006 LT (CG) 41

³ 2005 LT (CG) 151

5) It is thus clear that the respondents have not followed the statutory provisions of law before passing the impugned order.

6) In view of the foregoing, the petition deserves to be and is allowed. The impugned order Annexure-P/7 is quashed. No costs.

7) On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view that the termination order has been vitiated not on merit, but on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 40% back wages would be sufficient in the interest of justice.

Gowri

Sd/-
Satish K. Agnihotri
Judge